

JOURNAL OF THE HOUSE.

Tuesday, July 19, 2005.

Met according to adjournment, at eleven o'clock A.M., with Mr. Petrolati of Ludlow in the Chair (having been appointed by the Speaker, under authority conferred by Rule 5, to perform the duties of the Chair).

Prayer was offered by the Reverend Robert F. Quinn, C.S.P., Chaplain of the House, as follows:

Prayer.

Eternal God, we begin today's formal legislative session with minds and hearts open to You, Your guidance and Your truth. In analyzing and evaluating the many legislative and policy issues which come to our attention, we depend upon Your assistance in our efforts to make reasonable and responsible decisions. Inspire us, as representatives of the people, to select the right and not merely the easy answers to today's often complex issues. We believe that You are with us at all times and we can depend upon Your constant support and encouragement as we face the day's challenges.

Grant Your blessings to the Speaker, the members and employees of this House and their families. Amen.

Pledge of allegiance.

At the request of the Chair (Mr. Petrolati), the members, guests and employees joined with him in reciting the pledge of allegiance to the flag.

Statement Concerning Representative Connolly of Everett.

A statement of Mr. Rogers of Norwood concerning Mr. Connolly of Everett was spread upon the records of the House, as follows:

Statement concerning Representative Connolly of Everett.

MR. SPEAKER: I would like to call to the attention of the House the fact that one of our colleagues, Representative Connolly of Everett, will not be present in the House Chamber for today's sitting due his hospitalization. Any roll calls that he may miss today will be due entirely to the reason stated.

Statement Concerning Representative Kennedy of Brockton.

A statement of Mr. Rogers of Norwood concerning Mr. Kennedy of Brockton was spread upon the records of the House, as follows:

Statement concerning Representative Kennedy of Brockton.

MR. SPEAKER: I would like to call to the attention of the House the fact that one of our colleagues, Representative Kennedy of Brockton, was not present in the House Chamber for today's sitting due his continued medical care. Had he been present, he would have voted in the affirmative on the question on passing to be engrossed the House Bill relative to financing the production of affordable housing (House, No. 4277, printed as amended), of which he is a co-sponsor. Any roll calls that he missed today and the next several days will be due entirely to the reason stated.

Statement of Representative Turkington of Falmouth.

A statement of Mr. Turkington of Falmouth was spread upon the records of the House, as follows:

MR. SPEAKER: I would like to call to the attention of the House the fact that I was not present in the House Chamber for a portion of today's sitting due to official business in another part of the State House. Any roll calls that I missed today is due entirely to the reason stated.

Statement of Representative Turkington of Falmouth.

Petitions.

Petitions severally were presented and referred as follows:

By Mr. Speliotis of Danvers, petition (accompanied by bill, House, No. 4268) of Theodore C. Speliotis (by vote of the town) that the town of Topsfield be authorized to grant an additional license for the sale of alcoholic beverages not to be drunk on the premises. To the committee on Consumer Protection and Professional Licensure.

Topsfield, alcoholic beverages.

By Mr. Marzilli of Arlington, petition (accompanied by bill, House, No. 4269) of J. James Marzilli, Jr., and others (by vote of the town) relative to the appointment of members to the finance committee of the town of Arlington;

Arlington, finance committee.

By the same member, petition (accompanied by bill, House, No. 4270) of J. James Marzilli, Jr., and others (by vote of the town) for legislation to authorize the town of Arlington to establish a special account for the Symes conservation and improvement project; and

Arlington, Symes conservation.

By Ms. Stanley of West Newbury, petition (accompanied by bill, House, No. 4271) of Harriett L. Stanley and Bruce E. Tarr (by vote of the town) that the town of West Newbury be authorized to establish a department of public works;

West Newbury, public works.

Severally to the committee on Municipalities and Regional Government.

By Mr. Marzilli of Arlington, petition (accompanied by bill, House, No. 4272) of J. James Marzilli, Jr., and others (by vote of the town) that the town of Arlington be authorized to establish an additional post employment benefits trust fund; and

Arlington, post employment fund.

By the same member, petition (accompanied by bill, House, No. 4273) of J. James Marzilli, Jr., and others (by vote of the town) for legislation to remove secretarial positions of the school department of the town of Arlington from provisions of the civil service law;

Arlington, school secretaries.

Severally to the committee on Public Service.

Severally sent to the Senate for concurrence.

Petitions severally were presented and referred as follows:

By Mr. Curran of Springfield, petition (subject to Joint Rule 12) of Sean Curran and others relative to the granting of real estate tax exemptions to surviving spouses of members of the armed forces who lost their lives in the current military conflicts in Iraq and Afghanistan.

War widows, tax exemption.

By Mr. Kafka of Sharon, petition (subject to Joint Rule 12) of Louis L. Kafka for legislation to regulate the organic content of soil in newly constructed and renovated lawns.

Soil, organic content.

By Mr. Wagner of Chicopee, petition (subject to Joint Rule 12) of Joseph F. Wagner relative to the establishment of a sick leave bank

Kathleen A. Sammataro,

sick
leave.Amherst,
alien
voting.Employees,
injuries.Oxford,
liquor
license.Dracut,
Broadway
Convenience
Store.Dracut,
Scott's
Food
Mart.

Worcester.

Weymouth,
police.Boston,
Zenida
Flores.Robert
Welby,
retirement.Third
reading
bill.

for Kathleen A. Sammataro, an employee of the District Court of Chicopee.

By Ms. Story of Amherst, petition (subject to Joint Rule 12) of Ellen Story and Stanley C. Rosenberg (by vote of the town) that resident aliens of the town of Amherst be authorized to vote in local elections.

By Mr. Fresolo of Worcester, petition (subject to Joint Rule 12) of John P. Fresolo relative to the privacy of public records concerning reports of injuries of employees of public agencies and authorities of the Commonwealth.

Severally, under Rule 24, to the committee on Rules.

Reports of Committees.

By Mr. Pedone of Worcester, for the committee on Consumer Protection and Professional Licensure, on House, No. 4158, a Bill authorizing the town of Oxford to grant an additional license for the sale of alcoholic beverages to be drunk on the premises (House, No. 4274) [Local Approval Received].

By the same member, for the same committee, on House, No. 4171, a Bill authorizing the town of Dracut to grant an additional license for the sale of wine and malt beverages not to be drunk on the premises (House, No. 4275) [Local Approval Received].

By the same member, for the same committee, on House, No. 4172, a Bill authorizing the town of Dracut to grant an additional license for the sale of wine and malt beverages not to be drunk on the premises (House, No. 4276) [Local Approval Received].

Severally read; and referred, under Rule 7A, to the committee on Steering, Policy and Scheduling.

By Mr. Donato of Medford, for the committee on Steering, Policy and Scheduling, that the following matters be scheduled for consideration by the House:

House bills

Concerning illegal dumping in the city of Worcester (House, No. 1748);

Relative to the appointment of retired police officers in the town of Weymouth to serve as special police officers (House, No. 3848) [Local Approval Received];

Authorizing the retirement of officer Zenaida Flores of the Boston police department (House, No. 4120) [Local Approval Received]; and

Authorizing the retirement of Boston Police Officer Robert Welby (House, No. 4121) [Local Approval Received];

Severally placed in the Orders of the Day for the next sitting for a second reading.

Orders of the Day.

The House Bill relative to the Massachusetts Water Resources Authority (House, No. 4259) (its title having been changed by the

committee on Bills in the Third Reading), reported by said committee to be correctly drawn, was read a third time; and it was passed to be engrossed. Sent to the Senate for concurrence.

House bills

Providing for county advisory boards on economic development, regional planning and intergovernmental relations (House, No. 1622);

Establishing coastal storm damage mitigation accounts (House, No. 1629);

Relative to the State Library (House, No. 3527);

Establishing a sick leave bank for a certain employee of the Department of Correction (House, No. 4056);

Relative to the board of assessors of the town of Provincetown (House, No. 4096);

Authorizing the town of Mashpee to grant a certain easement (House, No. 4111); and

A petition for a special law re: the retirement of William I. Griffiths (House, No. 4123);

Severally were read a second time; and they were ordered to a third reading.

The House Bill relative to a parcel of land in the town of Tewksbury (House, No. 4248), reported by the committee on Bills in the Third Reading to be correctly drawn, was read a third time.

Pending the question on passing the bill to be engrossed, Messrs. Finegold of Andover and Miceli of Wilmington moved that it be amended by striking out all after the enacting clause and inserting in place thereof the following:

"SECTION 1. The town of Tewksbury shall deed a portion of this land, not including any wetlands, that is contiguous to the property owned by the Tewksbury Housing Authority, to said authority for the creation and maintenance of 20 motor vehicle parking spaces for the use of the tenants of the said Tewksbury housing authority property.

SECTION 2. Notwithstanding any general or special law to the contrary, the division of capital planning and operations is hereby authorized and directed to release its reversionary interest in a parcel of land conveyed to the town of Tewksbury by a deed authorized through chapter 564 of the acts of 1956."

The amendment was adopted; and the bill (House, No. 4248, amended) was passed to be engrossed. Sent to the Senate for concurrence.

Recess.

At a quarter after eleven o'clock A.M., on motion of Mr. Donato of Medford (Mr. Petrolati of Ludlow being in the Chair) the House recessed until one o'clock P.M.; and at seven minutes after one o'clock the House was called to order with Mr. Petrolati in the Chair.

Second
reading
bills.Tewksbury,
land.

Recess.

Quorum.

Quorum.

Mr. Flynn of Bridgewater asked for a count of the House to ascertain if a quorum was present. The Chair (Mr. Petrolati of Ludlow), having determined that a quorum was not in attendance, then directed the Sergeant-at-Arms to secure the presence of a quorum.

Quorum,
yea and nay
No. 132.

Subsequently a roll call was taken for the purpose of ascertaining the presence of a quorum; and on the roll call 146 members were recorded as being in attendance.

[See Yea and Nay No. 132 in Supplement.]

Therefore a quorum was present.

*Orders of the Day.*Special
education
services.

The House Bill relative to federal reimbursement services for children with Autism (House, No. 4177) (its title having been changed by the committee on Bills in the Third Reading), reported by said committee to be correctly drawn, was read a third time.

Bill passed
to be
engrossed,
yea and nay
No. 133.

After remarks on the question on passing the bill to be engrossed, the sense of the House was taken by yeas and nays, at the request of Ms. L'Italien of Andover; and on the roll call 153 members voted in the affirmative and 0 in the negative.

[See Yea and Nay No. 133 in Supplement.]

Therefore the bill (House, No. 4177) was passed to be engrossed. Sent to the Senate for concurrence.

Affordable
housing,
financing.

The House Bill relative to financing the production of affordable housing (House, No. 4244), reported by the committee on Bills in the Third Reading to be correctly drawn, was read a third time.

Recess.

After debate on the question on passing the bill to be engrossed, at five minutes after two o'clock P.M., on motion of Mr. Honan of Boston (Mr. Petrolati of Ludlow being in the Chair), the House recessed until half past two o'clock P.M.; and at four minutes before three o'clock the House was called to order with Mr. Petrolati in the Chair.

Mr. Bradley of Hingham then moved that the bill be amended by adding at the end thereof the following section:

"SECTION 9. Section 20 of chapter 40B of the General Laws is hereby amended in the first paragraph by adding after the word 'organization' the following new sentence:— Without limiting the generality of the foregoing, the provision of 'continuing care' as defined in, and subject to the provisions of section 76 of chapter 93 shall be considered housing for the purposes of the foregoing sentence and the requirement of an 'entrance fee', as defined in said section 76, shall not be taken into consideration in determining whether continuing care is low or moderate income housing except to the extent interest income is imputed thereto for purposes of calculating income.

Section 20 of chapter 40B of the General Laws is hereby further amended in the third paragraph by adding after the word 'needs.' The following new sentence:— For the purposes of the foregoing sentence, if a facility in which a person undertakes to provide continuing care provides low or moderate income housing in accor-

dance with the provisions of this chapter, then the number of dwelling units in such facility that shall be considered low or moderate income housing, shall be equal to the number of dwelling units considered low or moderate income housing in a rental housing development."

The amendment was rejected.

Ms. Polito of Shrewsbury then moved that the bill be amended by adding at the end thereof the following section:

"SECTION 9. Section 20 of Chapter 40B of the General Laws, as most recently amended by Section 181 of Chapter 26 of the Acts of 2003, is hereby amended by adding the following paragraph to the end of the definition 'Consistent with local needs':—

(c) less than 20% of the property tax base in the city or town is comprised of commercial/industrial zoned land and the application is for a project to be developed on property that was zoned commercial/industrial as of January 1, 2004, provided the city or town has public water and sewer and has a minimum single family residential lot size of 20,000 square feet or less, or the city or town does not have public water and sewer and has a minimum single family residential lot size of 40,000 square feet or less; and provided further, however, that the city or town may choose to waive this exemption."

The amendment was rejected.

Mr. Greene of Billerica then moved that the bill be amended by adding at the end thereof the following section:

"SECTION 9: Chapter 40B of the General Laws is hereby amended by adding the following section:—

Section 22 Within Comprehensive Permit Projects, all units, whether rental or ownership, shall be counted as Subsidized Housing Units."

The amendment was rejected.

The same member then moved that the bill be amended by adding at the end thereof the following section:

"SECTION 9: Notwithstanding any law or regulation to the contrary, within Comprehensive Permit Projects, authorized by sections 20 to 23 inclusive of Chapter 40B of the Massachusetts General Laws, all units, whether rental or ownership, shall be counted as Subsidized Housing Units."

The amendment was rejected.

Mr. Galvin of Canton then moved that the bill be amended by adding at the end thereof the following section:

"SECTION 9. Housing units authorized by a comprehensive permit shall be counted when the comprehensive permit becomes final. Any housing units, for which building permits have not been issued within one year of the date when the comprehensive permit becomes final, shall no longer be counted until building permits have been issued; provided, however, that the Department may, upon written request of the City or Town, extend such one year period for an additional one year period where, due to practical or legal impediments, no building period has been issued."

The amendment was rejected.

Affordable
housing,
financing.

Mr. Bradley of Hingham then moved that the bill be amended by adding at the end thereof the following section:

“SECTION 9. There shall be no requirement that households with individuals or families with combined income of no higher than 80 per cent of the median income be subsidized to be included in the affordable housing threshold.”

The amendment was rejected.

The same member and Mr. Hynes of Marshfield then moved that the bill be amended by adding at the end the following section:

“SECTION 9. All housing built under a comprehensive permit pursuant to Chapter 40B shall count towards a town’s affordable housing stock regardless of whether the property is rental or owner occupied.”

The amendment was rejected.

The same members then moved that the bill be amended by adding at the end the following section:

“SECTION 9. A local community may deny 1 project every two years.”

The amendment was rejected.

Mr. Hynes of Marshfield then moved that the bill be amended by adding at the end thereof the following section:

“SECTION 9. Section 20 of chapter 40B of the General Laws, as appearing in the 2002 Official Edition, is hereby amended in line 9 by inserting after ‘organization.’ the following:— All housing developed under the provisions of sections 20 through 23 shall be considered low or moderate income housing.”

The amendment was rejected.

The same member then moved that the bill be amended by adding at the end thereof the following two sections:

“SECTION 9. Chapter 40B of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after section 23 the following new section:—

Section 23A. Inclusionary zoning.

A city or town, by vote of its legislative body, may adopt a rule or regulation that every plan for any residential development shall include affordable dwelling units. ‘Residential development’ shall be defined in this section as any development resulting in the creation of new dwelling units of any sort. The required affordable dwelling units shall be at least 10 percent of every residential development. These required dwelling units shall be affordable for a period of at least 99 years to persons whose household income shall not exceed 80 percent of the area median income, as such income is most recently determined by the federal Department of Housing and Urban Development. Such requirements may be higher than 10 percent, and may be made available to persons whose household income shall not exceed 120 percent of the area median income if, by authorization via zoning ordinance or bylaw of the city or town, there is a provision for an increase in the permissible density or intensity of the particular use.

Notwithstanding the provision of required affordable dwelling units within a residential development, a planning board rule or regulation may allow for the provision of such units off-site, the dedica-

tion of land in a manner satisfactory to the board for such a purpose, or the payment of sufficient funds to the Affordable Housing Trust Fund of the city or town, provided the applicant demonstrates to the satisfaction of the board that the units cannot be otherwise provided on-site or that an alternative proposal does not better meet the needs of the city or town with respect to the provision of affordable housing. Off-site units, land dedication, or payment in-lieu of units must provide a benefit equivalent to the provision of on-site units, which benefit shall be determined by the planning board consistently and uniformly. Any agreement must be satisfactory to the planning board.

There shall be, within the department of housing and community development, a five member task force. The task force shall consist of the director of the department, or his or her designee, who shall be the chair of the task force, a representative from the Massachusetts Municipal Association, a representative from the Massachusetts Housing Partnership, a representative from the Massachusetts Chapter of the American Planning Association, and a member appointed by the Governor. The task force shall be responsible for adopting rules and regulations to implement this section. The department shall determine every five years thereafter whether cities and towns that accept this section are in compliance with these provisions, provided, however, that the department shall have the authority to review a municipality’s compliance at any time and issue a declaration of non-compliance.

In cities and towns that enact a zoning ordinance or bylaw under this section and are determined to be in compliance with this section by the department, the provisions of chapter 40B, sections 20 to 23, inclusive, shall not apply. In cities and towns that have not enacted a zoning ordinance or bylaw under this section or are determined to be not in compliance with this section by the department, the provisions of chapter 40B, sections 20 to 23, inclusive, shall remain in effect.

SECTION 10. Chapter 44 of the General Laws, as so appearing, is hereby amended by inserting after section 53E½ the following new section:— Section 53E¾. Affordable Housing Trust Fund.

Notwithstanding the provisions of section fifty-three, a city or town that accepts the provisions of chapter 40B section 23A shall establish an Affordable Housing Trust Fund for any monies accrued under that section. These funds shall be accounted for separately from all other monies in such city or town, and to which shall be credited all funds accrued under chapter 40B section 23A and to which may be credited any other funds available to the municipality for affordable housing. Expenditures may be made from such fund by vote of a city or town’s legislative body provided, however, that expenditures shall not be made nor liabilities incurred from the fund in excess of the balance of the fund. Interest earned on any fund balance shall be treated as part of the fund. The fund’s monies shall be used only to construct affordable housing or to purchase land for said purpose.”

The amendment was rejected.

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Messrs. Hynes of Marshfield and Bradley of Hingham then moved that the bill be amended by adding at the end thereof the following 13 sections:

"SECTION 9. Section 15 of chapter 19 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out, in line 40, the word 'approval.' and inserting in place thereof the following:— approval;

(k) to collect and maintain information on the number of group home units in each community and report such information, including the location of such group home units, to the department of housing and community development on an annual basis. Such location shall be held by the department of housing and community development subject to chapter 66A.

SECTION 10. Paragraph (b) of section 15 of chapter 19B of the General Laws, as so appearing, is hereby amended by adding the following sentence:— The department of mental retardation shall report the number of group home units in each city or town on an annual basis to the department of housing and community development. The department of mental retardation shall also report the location of such group homes to the department of housing and community development. Such location shall be held by the department of housing and community development subject to chapter 66A.

SECTION 11. The second paragraph of section 3 of chapter 23B of the General Laws, as so appearing, is hereby amended by striking out, in line 135, the word 'period.' and inserting in place thereof the following:— period;

(w) count the number of low or moderate income housing units, as defined by chapter 40B and the accompanying department of housing and community development regulations, in each city or town in the commonwealth on a biennial basis.

SECTION 12. Section 20 of chapter 40B of the General Laws is hereby amended by striking out section 20, as amended by section 181 of chapter 26 of the acts of 2003, and inserting in place thereof the following section:—

Section 20. As used in this section and in sections 20A to 23, inclusive, the following words shall, unless a different meaning clearly appears from the context, have the following meanings:— 'Affordable housing threshold', each city or town shall have a minimum affordable housing threshold such that at least 10 percent of year round housing units, as enumerated in the most recent federal decennial census, meet the requirements for inclusion on the subsidized housing inventory or on sites comprising one and one-half percent or more of total land area zoned for residential, commercial or industrial use in a manner consistent with sections 20 to 23, inclusive.

'Committee', the housing appeals committee.

'Consistent with local needs', shall have the meaning set forth in section 20A.

'Department', the department of housing and community development.

'Family', two or more persons who live or will live regularly in a unit as their primary residence whose income and resources are

available to meet the family's needs and who are either related by blood, marriage, operation of law or who have otherwise evidenced an inter-dependent relationship.

'Group home units', community housing units or beds serving clients of the department of mental retardation or the department of mental health which are located in a non-institutional setting. Each such community housing unit or bed shall serve 1 client.

'Local board', any town or city board of survey, board of health, planning board, conservation commission, building inspector or the officer or board having supervision of the construction of buildings or the power of enforcing municipal building laws, or city council or board of selectmen or other boards exercising power specified locally.

'Local program', a housing program established and administered by a city, town or county which has been authorized and approved by the department.

'Low or moderate-income households', individuals or families living in a housing unit with combined incomes no higher than 80 percent of the median income for the county in which the housing unit is located or an area as defined by the United States Office of Management and Budget, whichever is lower, as determined by the United States department of housing and urban development or, in the absence of such a determination, by the department.

'Low or moderate-income housing', any year round housing subsidized by the federal or state government under any program, or subsidized by a local government under a local program authorized and approved by the department, to produce housing which serves low or moderate-income households as defined in this chapter.

'Subsidy', the provision of: direct financial assistance; indirect financial assistance including insurance, guarantees, or other means; in kind assistance; technical assistance; or of other supportive services through a federal, state or local housing program to assist the construction of low or moderate-income housing.

'Subsidizing agency', any agency or entity of state, federal or local government which subsidizes the construction or substantial rehabilitation of low or moderate-income housing and any housing authority acting pursuant to clause (m) of section 26 of chapter 121B.

'Uneconomic', any condition brought about by any single factor or combination of factors to the extent that such condition makes it impossible for a public agency or nonprofit organization to proceed in building or operating low or moderate income housing without financial loss, or for a limited dividend organization to proceed and still realize a reasonable return in building or operating such housing within the limitations set by the subsidizing agency on the size or character of the development or on the amount or nature of the subsidy or on the tenants, rentals and income permissible, and without substantially changing the rent levels and units sizes proposed by the public, nonprofit or limited dividend organizations.

SECTION 13. Said chapter 40B is hereby further amended by inserting after section 20 the following four sections:—

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Section 20A. Decisions and requirements by the planning board shall be considered consistent with local needs if they are reasonable in view of the regional need for low or moderate income housing considered with the number of low and moderate income persons in the city or town affected and the need to protect the health or safety of the occupants of the proposed housing or of the residents of the city or town, to promote better site and building design in relation to the surroundings, or to preserve open spaces and the quality of drinking water supply and water resources; and if such decisions and requirements are applied as equally as possible to both subsidized and unsubsidized housing. Decisions and requirements shall also be deemed consistent with local needs when imposed by a planning board after comprehensive hearing in a city or town where:

(1) Low or moderate-income housing exists which is at least 10 per cent of the year round housing units reported in the most recent federal decennial census of the city or town; or on sites comprising one and one-half per cent or more of total land area zoned for residential, commercial or industrial use;

(2) The development is large scale for the city or town in which it is proposed. A proposed development shall be large scale if:—

(a) in a city or town which has a total number of 7,500 or more year round housing units as enumerated in the most recent federal decennial census, the application for a comprehensive permit involves construction of more than 300 housing units or a number of housing units equal to or greater than 2 per cent of all housing units in the city or town, whichever number is greater; or

(b) in a city or town which has between 5,000 and 7,500 year round housing units exclusive, as so enumerated, the application for a comprehensive permit involves construction of more than 250 housing units; or

(c) in a city or town which has between 2,500 and 5,000 year round housing units inclusive, as so enumerated, the application for a comprehensive permit involves construction of more than 200 housing units; or

(d) in a city or town which has less than 2,500 year round housing units, as so enumerated, the application for a comprehensive permit involves construction of more than 150 housing units; or

(3) The city or town has made recent progress toward attaining its affordable housing threshold. Recent progress toward its affordable housing threshold shall mean that the number of housing units that have been created during the 12 months prior to the date of the comprehensive permit application and that are eligible to be included on the subsidized housing inventory equal to or greater than 2 per cent of the city or town's total year round housing units as enumerated in the most recent federal decennial census; or

(4) 12 months has not elapsed between the date of application for a comprehensive permit and the date of the most recent pendency of a prior application for a variance, special permit, subdivision or other approval related to construction on the same land if that prior application included no provision for low or moderate income housing, provided that any such application shall not be considered a

prior application if it concerns only insubstantial changes to an existing use;

(5) the city or town has adopted an affordable housing plan approved by the department pursuant to which there is an increase in its number of low or moderate-income housing units eligible for inclusion on the subsidized housing inventory by at least one-half of 1 per cent of total year round housing units every calendar year until housing needs are met pursuant to this chapter, subject to paragraphs (a) and (b).

(a) The affordable housing plan shall be based upon a comprehensive housing needs assessment, which shall include an analysis of the most recent federal decennial census data of the city or town's demographics and housing stock, development constraints as well as of the city or town's ability to mitigate them, and the city or town's infrastructure.

(b) The affordable housing plan shall address the matters set out in guidelines adopted by the department, including:—

(i) a mix of housing, such as rental and homeownership opportunities for families, individuals, persons with disabilities or special needs, and the elderly that are consistent with local needs and feasible within the housing market in which they will be situated;

(ii) the strategy by which the city or town will achieve its housing goals based upon its comprehensive needs assessment;

(iii) the characteristics of projects the city or town prefers that are consistent with the guidelines established by the department for smart growth and development including, but not limited to, redevelopment and adaptive reuse, cluster housing, higher-density housing, transit or pedestrian-oriented development which provides access to jobs and services, resource efficient buildings, and development in locations with existing infrastructure;

(iv) a description of the use restrictions which shall be imposed on lower moderate-income housing units to ensure that each unit will remain affordable to and occupied by low or moderate-income households;

(v) the identification of zoning districts or geographic areas which permit residential uses which the city or town proposes to modify or has created for the purposes of low or moderate-income housing developments;

(vi) the identification of specific sites or characteristics of sites for which the city or town will encourage the filing of comprehensive permit applications pursuant to section 21; and

(vii) city or town owned parcels, if any, for which the city or town commits to issue requests for proposals to develop low or moderate-income housing.

(c) Upon submission to the department, the plan shall also be submitted to the regional planning district established pursuant to this chapter or the Cape Cod commission, established pursuant to section 18 of chapter 716 of the Acts of 1989, or the Martha's Vineyard commission, established pursuant to chapter 831 of the Acts of 1977, within such district or commission area such project is located or any other regional planning district hereafter established by the general court, which shall have 30 days to comment to the depart-

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ment on the implications of the plan for housing need, growth and development concerns, and other relevant matters. Within 90 days after its submission to the department by a city or town's chief executive officer, the department shall approve the plan if it meets the requirements specified herein, otherwise, it shall disapprove the plan. The department shall notify the city or town of its decision to either approve or disapprove a plan in writing. If the department disapproves a plan, the notification shall include a statement of reasons for the disapproval. A city or town that originally submitted a plan that had been disapproved may submit a new or revised plan to the department at any time. A city or town may amend its plan from time to time if the department approves the amendment. If the department fails to mail notice of approval or disapproval of a plan or plan amendment within 90 days after its receipt, the plan or plan amendment shall be deemed to be approved.

(d) The department shall certify annually whether a city or town is in compliance with an approved plan. The department shall determine whether a city or town is in compliance within 30 days of receipt of a city or town's request for such a certification. A city or town shall be in compliance if it has reached the benchmarks established in its approved plan and has made all changes necessary to accommodate future planned development. If the department determines the city or town is in compliance with its plan, the certification shall be retroactive to the date the certification was requested. Provided further, if a city or town fails to achieve the goals established in the approved plan and as documented on the subsidized housing inventory the city or town shall not be in compliance with its plan and shall submit a new plan for certification by the department.

(e) Units which were created and which became eligible to be counted toward a city or town's affordable housing threshold between August 1, 2002 and December 31, 2002 shall be credited toward the city or town's affordable housing threshold for the first year of planned production under an approved affordable housing plan, regardless of the date the plan is submitted to or certified by the department. An approved plan shall take effect for the purpose of the definition of consistent with local needs in this section only when the department certifies that the city or town has approved permits resulting in an initial annual increase in its low-or moderate-income housing units of at least one-half of 1 per cent of total year round housing units in accordance with its plan. It is the responsibility of the city or town to request such certification from the department. Once the department has made such a certification of initial compliance and subsequent annual certifications of compliance:—

(1) The board may, in its discretion, deny, or approve with conditions, any comprehensive permit applications for the period of 1 year from any certification, and such denial or approval with conditions shall be deemed consistent with local needs; or, alternatively,

(2) The board may, in its discretion, deny or approve with conditions any comprehensive permit applications for the period of 2 years from any certification, if, in the year it was certified, the city

or town has increased its low or moderate-income housing stock by at least 1 per cent of total year round housing units in a manner consistent with the plan, or alternatively,

(3) The board may, in its discretion, deny, or approve with conditions, any comprehensive permit applications for the period of 3 years from any certification, if, in the year it was certified, the city or town has increased its low or moderate-income housing stock by at least 1 per cent of total year round housing units in a manner consistent with the plan; or

(6) the board has approved 3 or more comprehensive permits, at least 3 of which contain 20 or more housing units each within 12 months preceding the filing of an application for a comprehensive permit and those permits have become final. The board shall have the authority to choose among multiple applicants which comprehensive permits will be accepted.

A developer that has requested a zoning change and that request has been accepted by the Town Meeting or the City Council may not seek a 40B approval for one year following the zoning change.

Section 20B. (a)(1) To be eligible to submit an application for a comprehensive permit or to file or maintain an appeal before the committee, the applicant and the project shall fulfill the following jurisdictional requirements:—

(i) The applicant shall be a public agency, a nonprofit organization, or be, or agree to become, limited dividend organization. An applicant shall satisfy the limited dividend organization requirement if the owner of the project stipulates in writing to execute a regulatory agreement with a subsidizing agency which limits the owner's return on building or operating the project to the amounts set by the subsidizing agency or program if a comprehensive permit is issued. Such regulatory agreement shall be recorded or filed prior to the beginning of construction of the land records with the registry of deeds or land court in the registry district or district office of the land court in which the project is located.

(ii) The project shall be fundable by a subsidizing agency under a low and moderate-income housing subsidy program.

(iii) The applicant shall control the site.

(iv) The proposed development shall contain no less than 25 per cent of its total housing units as units affordable to low or moderate-income households, or in the alternative a proposed development may contain no less than 20 per cent of its total housing units as affordable to households whose income does not exceed 50 per cent of the area median income; provided, further, that the inclusion of commercial, recreational or other land uses which are in conjunction with the housing development shall not preclude eligibility.

(2) Fundability shall be established by submission of a written determination of project eligibility by a subsidizing agency as follows:—

(i) A determination of project eligibility shall include:—

(A) the name and address of the applicant;

(B) the address of the site and site description;

(C) the number and type (homeownership or rental) of housing units proposed;

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(D) the name of the housing program or programs under which project eligibility is sought; and

(E) relevant details of the particular project if not mandated by the housing program, including the percentage of units for low or moderate-income households, income eligibility standards, the duration of use restrictions requiring occupancy by low or moderate-income households, and the limited dividend status of the developer;

(ii) A determination of project eligibility shall make the following findings:

(A) that the proposed project appears generally eligible under the requirements of the housing programs, subject to final review of eligibility and to final approval;

(B) that the subsidizing agency has performed an on-site inspection of the site and has reviewed pertinent information submitted by the applicant;

(C) that the proposed housing design and density are generally appropriate for the site on which it is located, taking into account surrounding land uses, proximity to transportation, services and public utilities, and design to minimize land use impacts;

(D) that the proposed project appears financially feasible within the housing market in which it will be situated, based on comparable rentals or sales figures;

(E) that an initial pro forma has been reviewed and the project appears financially feasible on the basis of estimated development costs; and

(F) that the developer of the proposed project meets the general eligibility standards of the housing program or programs.

(iii) In addition to the foregoing, a subsidizing agency shall consider the following in making a determination of project eligibility; overall density and size; environmental impact, including impacts on watersheds, rivers, and water bodies, wildlife habitat and existing land uses; consistency with principles of smart growth, including without limitation land use protections set forth in the open space and recreation plans adopted by the planning board of the municipalities, or by the Town Meeting or City Council and approved by the Executive Office of Environmental Affairs; impact on historical resources; the impact of other pending applications for housing development; and other local concerns of the city or town where the project is located.

(iv) Within 10 days of filing of its application for a determination of project eligibility with a subsidizing agency for preliminary approval of a project, the applicant shall serve written notice upon the director of the department.

(v) Within 10 days of filing the application for a determination of project eligibility the applicant shall provide written notice and a copy of such application to the chief executive officer of the involved city or town and to the members of the general court representing such city or town. The applicant shall also provide written notice of the application to the board of zoning appeals, board of health, conservation commission, water and sewer district, fire and police. Within 30 days after such notice, the chief executive officer or designee of the chief executive officer may schedule and hold a

meeting at a location within the involved city or town. The meeting shall be chaired by the city or town's chief executive officer or designee and shall be attended by the applicant or its representative. Representatives from local boards are encouraged to attend the meeting and provide written comment. The purpose of the meeting is to allow the applicant and the city or town representatives to informally discuss the preliminary proposal so that the parties involved can develop an understanding of the proposal and to respond to concerns raised in an effort to achieve an outcome that meets the needs of the involved city or town as well as the applicant. In addition, a representative from a public or quasi-public housing agency, or a regional planning agency within the regional planning district or its designee knowledgeable with respect to chapter 40B may provide technical assistance on topics including, but not limited to, site design and density, open space, marketing, use restrictions, allowable costs and profit limitations. Following the close of the meeting, the chief executive officer of the city or town, local boards, and the regional planning district may issue written comments within 14 days to the subsidizing agency.

(vi) Within 10 days of receipt of a written determination of project eligibility from the subsidizing agency, the applicant shall serve a copy of that determination upon the director of the department.

(vii) An applicant which has obtained a determination of project eligibility shall be presumed to be eligible to submit an application for comprehensive permit or to file or maintain an appeal before the committee. Nothing set forth in this section shall be deemed to confer upon any city or town, or any of its boards, committees, commissions or officials, or upon any other person the right to appeal or judicial review in any form the determination of project eligibility by the subsidizing agency, it being intended that the rights of appeal conferred by sections 21 and 22 shall be the exclusive remedy for any party aggrieved by the issuance or denial of any comprehensive permit hereunder.

(viii) If project funding is provided through a non-governmental entity, a public or quasi-public entity authorized by the department shall make the determination of project eligibility. The designated entity that issued the project eligibility determination shall administer the project thereafter as specified in program guidelines issued by the department.

(3) A showing that the applicant, or any entity 50 per cent or more of which is owned by the applicant, owns a 50 per cent or greater interest, legal or equitable, in the proposed site, or holds any option or contract to purchase the proposed site, shall be considered by the board or the housing appeals committee to be conclusive evidence of the applicant's interest in the site.

(4) No determination of project eligibility shall be issued for a project sooner than 45 days after the filing of its application with the subsidizing agency for preliminary approval of the project. A determination of project eligibility shall be for a particular financing program or programs. An applicant may proceed under alternative financing programs if the application to the board or appeal to the

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committee so indicates and if full information concerning the project under the alternative financing arrangements is provided.

(5) Failure of the applicant to fulfill any of the requirements in this section may be raised by the housing appeals committee, the board, or a party at any time, and shall be cause for dismissal of the application or appeal. No application or appeal shall be dismissed, however, unless the applicant has had at least 60 days to remedy the failure.

(b) In order to appeal to the committee, an applicant shall have applied to the board for a comprehensive permit in accordance with section 21 of this chapter and shall have been denied such permit or shall have been granted such permit with conditions which it alleges make the building or operation of such housing uneconomic.

(c) (1) A city or town may record progress towards its affordable housing threshold as documented in the subsidized housing inventory in the following manner:

(i) Rental Housing Units Developments: (a) If at least 25 percent of housing units within a development are restricted to serve low or moderate-income households, 100 per cent of housing units within the development shall be eligible to be included toward the city or town's affordable housing threshold. If fewer than 25 per cent of housing units within a development are restricted to serve low or moderate-income households, only those units which serve low or moderate-income households shall be eligible to be included toward the city or town's affordable housing threshold or (b) if at least 20 per cent of housing units within a development are restricted to serve households with household income at or below 50 per cent of area median income, 100 per cent of housing units within the development shall be eligible to be included toward the city or town's affordable housing threshold. If fewer than 25 per cent of housing units within a development are restricted to serve low or moderate-income households, only such restricted units shall be eligible to be included toward the city or town's affordable housing threshold;

(ii) Homeownership Units Developments: (a) if at least 25 per cent of housing units within a development are restricted to serve low or moderate-income households, 2 times the actual number of such restricted units, not to exceed the total number of homeownership units authorized by the permit shall be included toward the city or town's affordable housing threshold or (b) if at least 20 per cent of housing units within a development serve households earning at or below 50 per cent of area median income, 2 times the actual number of units serving such households, not to exceed the total number of homeownership units authorized by the permit shall be included toward the city or town's affordable housing threshold. If fewer than 25 per cent of housing units within a development are restricted to serve low or moderate-income households, only such units which are restricted to serve low or moderate-income households shall be eligible to be included toward the city or town's affordable housing threshold;

(iii) Community Preservation Act Housing Units: any community housing, as defined in chapter 44B which is subject to a use restriction requiring occupancy by low or moderate income households,

provided further, that such housing payment exclusive of utilities shall not exceed 30 per cent of monthly income of a household at or below 80 per cent of area median income, adjusted for household size, shall be eligible to be included toward the city or town's affordable housing threshold;

(iv) Accessory Apartment Units: any accessory apartment which is approved pursuant to a city or town's ordinance or bylaw and is occupied by persons of low or moderate income; provided further, that such rental payment exclusive of utilities shall not exceed 30 percent of monthly income of a household earning at or below 80 percent of area median income, adjusted for household size, shall be eligible to be included toward the city or town's affordable housing threshold. Each such accessory apartment unit shall be subject to a use restriction, which may be revocable upon the sale of the principal residence. Each city or town shall certify annually the number of such accessory apartments within its borders;

(v) Group Home Units: all group home units in each city or town as reported annually by the department of mental health and the department of mental retardation to the department shall be eligible to be included toward the city or town's affordable housing threshold;

(vi) Local Housing Units: housing units created under a local program or subsidy or which qualify as local initiative units pursuant to regulations promulgated by the department and restricted to serve low or moderate income households as defined in this chapter shall be eligible to be included toward the city or town's affordable housing threshold as documented on the subsidized housing inventory; and

(vii) Urban Center Housing Tax Increment Financing Units: low or moderate income housing created pursuant to section 60 of chapter 40 and subject to a use restriction provided; further, that such housing payment exclusive of utilities shall not exceed 30 per cent of monthly household income of a household earning at or below 80 per cent of area median income shall be eligible to be included toward the city or town's affordable housing threshold.

(viii) Expiring Use Units: In instances where housing units were developed to serve low or moderate income households and the use restriction has expired as a result of refinancing or operation of law or otherwise, only those housing units that continue to serve low or moderate-income households; provided further, that if such units were constructed pursuant to a comprehensive permit under chapter 40B they shall be eligible to be included toward the city or town's affordable housing threshold.

Manufactured Housing Units: 50% of the homes in a community, as defined by section 32Q of chapter 140, shall be eligible to be included toward the city or town's affordable housing threshold as documented on the subsidized housing inventory.

(d) The department shall maintain an inventory of low or moderate income housing units. Such inventory shall be published biennially; provided further, that such inventory shall be updated for a specific city or town upon request by such city or town supported by the evidence thereof. Housing units authorized by a comprehensive

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permit or special permit which authorizes the creation of low or moderate income housing subject to a use restriction shall be eligible to be included toward a city or town's affordable housing threshold as recorded on the subsidized housing inventory when such comprehensive permit or special permit becomes final, provided that housing units for which building permits have not been issued within 1 year of the date when such comprehensive permit or special permit became final shall no longer be eligible to be counted toward the city or town's affordable housing threshold until the building permits have been issued. The department may for good cause waive such time requirement. Low or moderate income housing units not authorized pursuant to such comprehensive permit or special permit shall be eligible to be counted toward the city or town's affordable housing threshold when a building or occupancy permit is issued.

Section 20C. The Massachusetts Housing Partnership Fund board, as established by section 35 of chapter 405 of the acts of 1985, or its designee, shall make technical assistance available to local zoning boards of appeal to assist in their review of applications for comprehensive permits. No subsidizing agency shall issue a determination of project eligibility or site approval unless a fee to defray the costs of such technical assistance program has been collected from the applicant and remitted to the Massachusetts Housing Partnership Fund board in accordance with a fee schedule adopted by the department. Such fee shall be payable upon the filing of a comprehensive permit application.

Section 20D. The department shall promulgate regulations and establish programs, policies, guidelines and necessary fee schedules to implement sections 20 to 23, inclusive, of this chapter. The department shall make available planning and housing development information and technical assistance to assist cities and towns in reaching their affordable housing threshold as defined in this chapter.

SECTION 14. The first paragraph of section 23 of said chapter 40B, as so appearing, is hereby amended by inserting after the first sentence the following sentence:—

The committee shall receive evidence of and shall consider the following matters: (1) a city or town's master plan, comprehensive plan or community development plan, and (2) the results of the city or town's efforts to implement such plans.

SECTION 15. Notwithstanding any general or special law to the contrary, no application for a comprehensive permit filed pursuant to sections 20 through 23 of chapter 40B before the effective date of this act shall be denied as a result of changes pursuant to this act.

SECTION 16. There is hereby established a special commission to study the opportunity to increase the availability of housing for extremely low to moderate-income families and individuals in the Commonwealth by prioritizing the redevelopment of brownfield sites, so-called, and commercial areas for residential purposes. Said commission shall consist of three members of the senate, three members of the house of representatives, one from each branch shall serve as co-chairmen, the director of housing and community devel-

opment or his designee, the director of mass development or his designee, and five persons to be appointed by the governor, one of whom shall be a representative from Citizen's Housing and Planning Association, Inc., one of whom shall be a representative of the Greater Boston Chamber of Commerce, one of whom shall be a representative from the Massachusetts Homebuilders Association, and one of whom shall be a representative from the Massachusetts Municipal Association. Said commission shall file its recommendations together with the recommendations for legislation, if any, with the house and senate clerks who shall forward the same to the house and senate committees on housing and urban development on or before November 15th, 2004.

SECTION 17. Section 21 of said chapter 40B, as so appearing, is hereby amended by striking out, in lines 3 and 4, the following: 'board of appeals, established under section twelve of chapter forty A' and inserting in place thereof the following: 'planning board, established under section 70 of chapter 41' and is hereby further amended by striking out, in lines 5, 9, 17, 20 and 24 the following: 'board of appeals' and inserting in place thereof, in each instance, the following:— planning board.

SECTION 18. Section 22 of said chapter 40B, as so appearing, is hereby amended by striking out, in lines 7 and 10, the following: 'board of appeals' and inserting in place thereof, in each instance, the following:— planning board.

SECTION 19. Section 23 of said chapter 40B, as so appearing, is hereby amended by striking out, in lines 4, 9, 23 and 30, the following: 'board of appeals' and inserting in place thereof, in each instance, the following:— planning board.

SECTION 20. Seventy-five per cent of assisted living units as defined under the General Laws, requiring an entrance deposit and a monthly fee shall be considered as rental housing units.

SECTION 21. This act shall take effect on December 1, 2004.”.

The amendment was rejected.

Mr. Hynes of Marshfield then moved that the bill be amended in section 4, in line 5, by inserting after “program” the following: “provided, however, that no funds shall be issued to developers of unfriendly projects, so-called, developed under the provisions of sections 20 through 23 of chapter 40B of the General Laws”.

The amendment was rejected.

Messrs. Timilty of Milton and Bradley of Hingham then moved that the bill be amended by inserting after section 6 (as printed) the following section:

“SECTION 6A. No monies expended for the purposes set forth herein this act shall be used for the development of housing pursuant to sections 20 through 23 of chapter 40B of the General Laws unless there shall have been submitted to, and approved by vote of, an annual town meeting or special town meeting called therefor, and further, that said vote shall determine the project to be reasonably necessary and economically feasible for the local municipality to maintain its current or better level of services.

The amendment was rejected.

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The same members then moved that the bill be amended by inserting after section 6 (as printed) the following section:

“SECTION 5A. Section 39 of the chapter 121B of the General Laws is hereby amended by inserting in paragraph 6, line 6 thereof after the word ‘veteran’ the following:— and qualified persons who have military service and are disabled.”.

The amendment was rejected.

Mr. Timilty then moved that the bill be amended by inserting after section 6 (as printed) the following section:

“SECTION 5A. No monies expended for the purposes set forth herein this act shall be used for the development of housing pursuant to sections 20 through 23 of chapter 40B of the General Laws in the Towns of Randolph and Milton unless there shall have been submitted to, and approved by vote of, an annual town meeting or special town meeting called therefor, and further, that said such vote shall determine the project to be reasonably necessary and economically feasible for the local municipality to maintain its current or better level of services.”.

The amendment was rejected.

Mr. Hynes of Marshfield moves that the bill be amended in section 2, in item 7004-0021, in line 3, by striking out the figures “\$100,000,000” and inserting in place thereof the figures “\$90,000,000”; in item 7004-0022, in line 17, by striking out the figures “\$100,000,000” and inserting in place thereof the figures “\$90,000,000”; and in section 3, in line 4, by striking out the figures “\$200,000,000” and inserting in place thereof the figure “\$180,000,000”.

After debate on the question on adoption of the amendments, the sense of the House was taken by yeas and nays, at the request of the same member; and on the roll call 6 members voted in the affirmative and 148 in the negative.

[See Yeas and Nays No. 134 in Supplement.]

Therefore the amendments were rejected.

Mr. Honan of Boston then moved that the bill be amended by striking out the emergency preamble and inserting in place thereof the following:

“Whereas, The deferred operation of this act would tend to defeat its purpose, which is to provide forthwith funding for housing, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.”.

The amendment was adopted.

On the question on passing the bill, as amended, to be engrossed, the sense of the House was taken by yeas and nays, at the request of Mr. Honan; and on the roll call 152 members voted in the affirmative and 0 in the negative.

[See Yeas and Nays No. 135 in Supplement.]

Therefore the bill (House, No. 4277, printed as amended) was passed to be engrossed. Sent to the Senate for concurrence.

Bill
passed to
be engrossed,
yea and
nay No. 135.

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The House report of the committee on Public Service, ought NOT to pass, on the petition (accompanied by bill, House, No. 325) of Thomas J. O’Brien and Mary J. Richards for legislation to direct the

State Board of Retirement to grant a certain accidental death benefit to Julie Hutcheson,— was considered.

Pending the question on acceptance of the report, the petition was recommitted, on motion of Mr. Kaufman of Lexington.

Order.

On motion of Mr. DiMasi of Boston,—

Ordered, That when the House adjourns today, it adjourn to meet tomorrow at eleven o’clock A.M.

Next
sitting.

Mr. Peterson of Grafton then moved that the House adjourn; and the motion prevailed. Accordingly, without further consideration of the remaining matters in the Orders of the Day, at twenty-three minutes before four o’clock P.M. (Mr. Petrolati of Ludlow being in the Chair), the House adjourned, to meet tomorrow at eleven o’clock A.M.